Native Corporation Leaders must Exercise "Good Faith" and "Reasonable Care" at All Times

Editor's Note: This is the thirty-first in a series of excerpts from the Alaska Native Land Claims *by Robert D. Arnold, Janet Archibald, Margie Bauman, Nancy Yaw Davis, Robert A. Frederick, Paul Gaskin, John Havelock, Gary Holthaus, Chris McNeil, Thomas Richards, Jr., Howard Rock, and Rosita Worl. The book was published and copyrighted by the Alaska Native Foundation, 515 D Street, Anchorage, Alaska 99501 in 1976. No portion of this material may be reproduced without the permission of the Foundation. The book was produced with funds authorized by the Indian Education Act supplemented by a grant from the Ford Foundation. The first printing of the book is no longer available. The Foundation has not decided whether it will arrange a second prining. The Tundra Times is grateful for permission to reproduce these excerpts. Conclusion of the serial will be made in the next issue of the Tundra Times.*

In establishing a tug and barge operation in Prince William Sound, Chugach Natives, Inc., was partly motivated by profits and the expansion of job opportunities. In addition, according to its president Cecil Barnes, the corporation was inspired by environmental concerns. " Other tug and barge operators might want to avoid polluting the Sound because of the law," he explained, "but we want to because it is our water our home and we care about it."

Another illustration is to be found in the 1974 Konaig report. After noting the obligation to make profits, the report says:

> . . . law or no law, the land and the sea will always mean more to us than dollars and cents. We shall continue to treat them with respect, and all we ask all those with whom we do business with to do likewise.

Subsistence

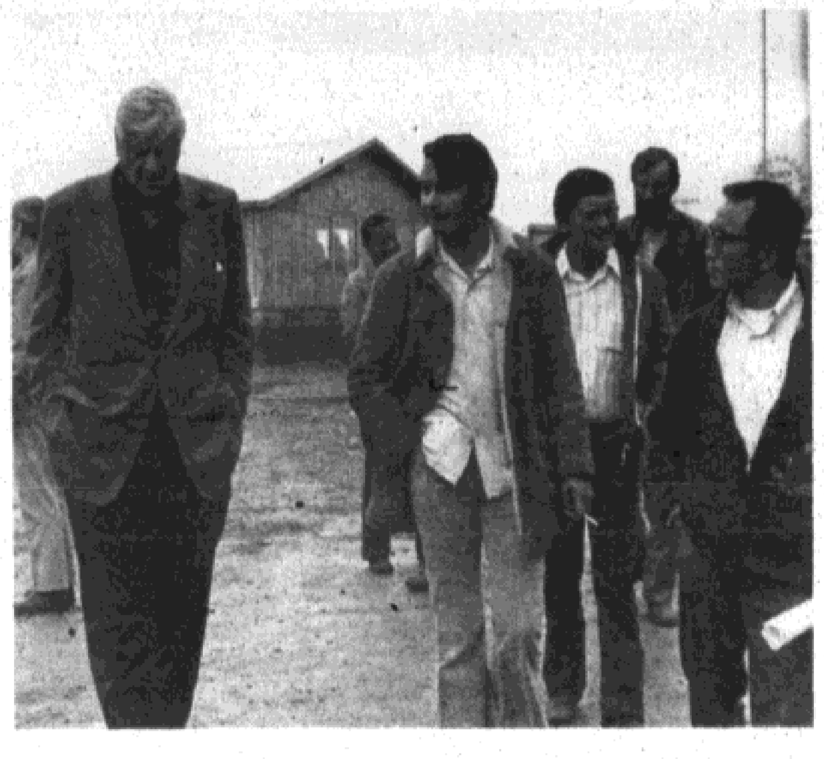
One of the several corporations which has made maintenance of subsistence resources a goal is NANA Regional Corporation. In recommending its formal adoption to his board of directors, President Schaeffer called the maintenance of subsistence "the single most important need of all the people."

> ... if subsistence is gone ... NANA undoubtably will have to pull back from most, if not all, of its activities, with a needed redirection of its cash resources, to meet the void caused by the lack of subsistence resources, such as caribou and fish. The cash resources of NANA, however, are not unlimited and unless there are other activities that will generate additional income, utilizeing NANA's cash resources to meet subsistence needs at best will be a short-term solution and a self-defeating one; for when the cash is gone, there will be no substitute for the already lost subsistence, and with its financial resources gone, NANA will see its land start to go.. It could be said that the continued existence of NANA and the continued existence of the well-being of its sharehoders is based solely on the continued existence of the natural subsistence resources of the Region.

In adopting its goals, the NANA board adopted them subject to future discussion and approval of its stockholders in 1975.

Native way of life

A goal increasingly talked about by spokesmen for settlement act corporations is the preservation of the Native way of life. In 1974, Byron Mallott, the State's Commissioner of Community and Regional Affairs, told the convention of the Alaska Federation of Natives, "I think that we as Native people must stop talking glibly of the 'Native way of life' and start doing something to make sure it is sustained." Mallott, a member of the boards of Yak-tat-Kwaan, the Yakutat village corporation, and of Sealaska, stresses the importance of defining the Native way of life as a first step toward protecting it.



GOAL IS INSTILLING PRIDE – Discussing concerns of the NANA Regional Corporation with former Interior Secretary Rogers C.B. Morton at Kotzebue in 1974 are (in foreground from right of Morton) NANA Regional Corporation President John Schaeffer, Kikiktagruk Inupiat (Kotzebue village) Corporation Tommy Sheldon, and NANA land director Willie Goodwin. Schaeffer explains a goal of NANA as "... giving each shareholder the pride of being who he or she is, for without that, whatever might follow would be meaningless ..." –Margie Bauman Photograph

The Native way of life is part of a broader goal of the NANA Regional Corporation. That goal is "instilling pride and confidence in the shareholders and Natives of the NANA Region." As Schaeffer explained:

> ... the most important nonmaterial need is that of giving each shareholder the pride of being who she or he is, for without that, whatever might follow would be meaningless, would miss the important goal of giving meaning to life. To help achieve this goal, it should be recognized that NANA can contribute to the cultural heritage of the region by seeing that the history and folklore of the people are preserved, making it available to the generations to come.

Such a program, he pointed out, would help an individual to determine what kind of life she or he wants to pursue. But cultural heritage efforts would be just one part of the program. It would include fostering opportunities for employment, self-government, and initiative and other things as well.

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Responsibilities

Most of the responsibility imposed for the achievement of corporate goals rests with the directors of the corporation. Their election by stockholders has charged them with the conduct of corporate affairs. They, in turn, choose the president of the corporation and other officers. Under the leadership of the officers, the directors establish goals and set policies which will help achieve the goals.

In the conduct of the corporation, directors are bound by responsibilities established by law. Beyond those responsibilities are the even heavier burdens imposed upon them by those who have given them their votes.

To some extent, these responsibilities are shared by stockholders.

Legal Principles

There are two basic legal obligations common to directors of all corporations: a director must act in "good faith" and he or she must act with "reasonable care."

Essentially, acting in good faith means putting loyalty to a corporation above personal gain for oneself. A director who hears of a business opportunity must report it to his corporation to determine whether it is interested, instead of promptly pursuing the opportunity himself. A director should report to his or her

STOCKHOLDERS HEAR Ahtna treasurer announce dividend at annual meeting in 1975. While most of the resonsibility for achievement of corporate goals rests with directors and staff of corporations, stockholders themselves have a share in it. While their role in corporate affairs is a limited one, they ought to bring to it the same attributes they look for in their directors. Ahtna, Inc. Photograph by Frank Flavin

board if he has personal financial interests in any purchase of goods or services being considered by the board; in case of such a conflict he should not vote. Generally speaking, problems of good faith occur when a director tries to obtain personal advantage for himself, his family, or his friends through his board position.

Acting with reasonable care means taking the responsibilities of the position seriously and working hard to meet the responsibility. A director must be well-informed about the settlement act, regulations, state and federal laws, and his corporation's articles and bylaws. He must also know much about his corporation's activites so that, together with other board members, he can provide oversight and policy direction.

Directors are legally bound to act in good faith and with reasonable care. If they do not, they may be held answerable in court. If one fails to meet his legal obligation, he could be [illegible]d, or in s[illegible]s cases, go to jail.

Wisdom and Fairness

Another way of viewing responsibilities of directors is to look to what stockholders hope will also be true of their directors: that they will be wise and fair. Perhaps this is what John Sackett was saying in his *Tundra Times* column early in 1972 when he spoke of "the greatest responsibility of leadership." Addressing corporate leaders, he wrote:

> ... because you will be working with your own people's money, their birthright and their settlement, and because in many cases, many of the Native people do not know what decisions to make because of a lack of education, this will be the greatest responsibility of leadership.

And perhaps it is what Howard Rock referred to earlier, immediately after the passage of the settlement act:

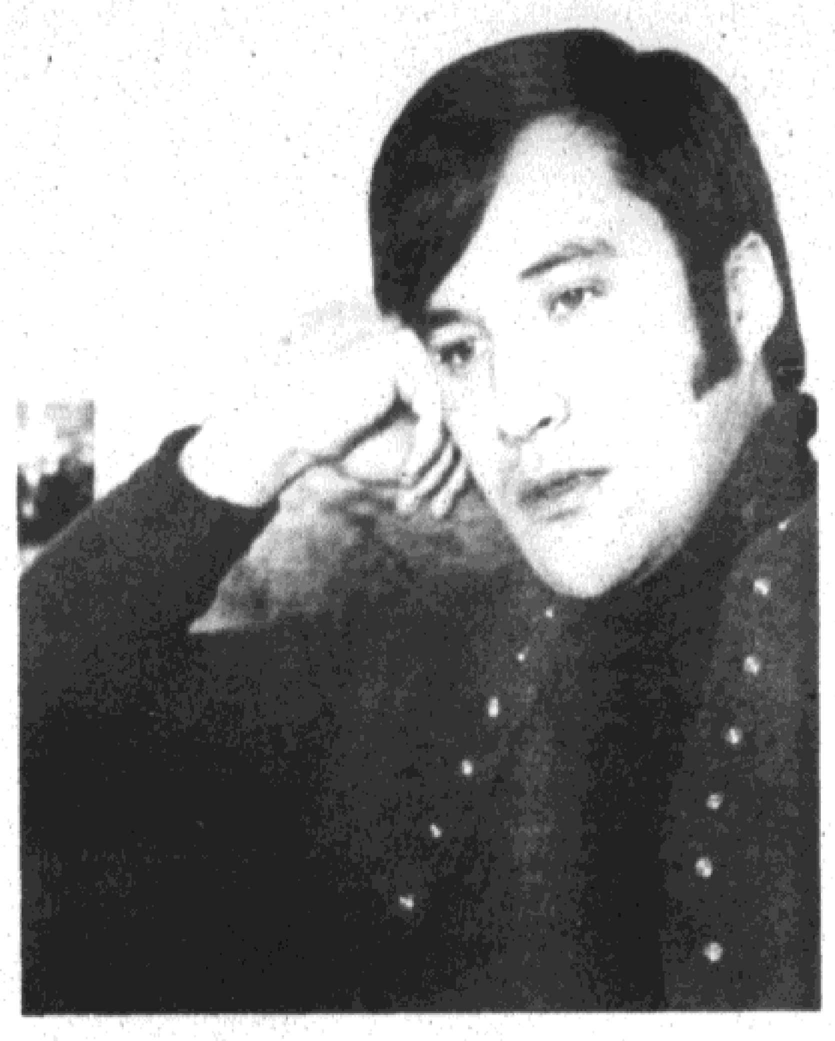
> . . . the provisions in it must always be handled carefully, always with feelings that it is being done for the good of the present generation and for the good of the Native people in the future.

If the only goal of settlement act corporations were one of making money, deciding specific issues would be difficult enough. As noted earlier, directors would have to estimate not only how much money a specific investment might earn, but also how safe the investment might be. They would also have to forecast other effects the investment might have – upon the corporation's shareholders and upon the larger community – and take these effects into consideration. In weighing the facts and projections, they would need to act wisely, but questions of fairness would not often arise.

Given the multiplicity of goals which corporations have, however, the question of what is fair is frequently asked. Illustrations may be found in the matter of distribution of the benefits of corporate activity.

The benefits of a corporation's activities are unevenly distributed. Those who work for a corporation obtain more benefit than those who are simply stockholders. Far more dollars will probably go to those on its payrolls than to persons who only receive dividends. Those who sell goods and services to the corporation also obtain more benefits than those who are only stockholders. To assure fairness in management decisions about who will be hired or from whom goods will be purchased, boards of directors of corporations typically establish fixed procedures.

Both wisdom and fairness are certainly required of directors as they seek to balance the interests of resident stockholders and nonresident stockholders. If a regional corporation has a goal of stimulating new jobs in the region, it might decide, for instance, to establish a lumber mill within it. Stockholders who live there might applaud the decision because jobs are scarce for them. Stockholders outside the region who are already employed might criticize it, particularly if greater profits might be earned by investments outside the region.



GREATEST REPONSIBILITY OF LEADERSHIP – John Sackett, in encouraging Native corporation directors to be wise and fair, wrote in 1972 "... because you will be working with your own people's money, their birthright and their settlement ... this will be the greatest responsibility of leadership."

It requires a sense of wisdom and fairness for a board to decide how much of the region's money assets ought to be used to protect subsistence resources. The village stockholder would see that goal as a high priority, but the distant stockholder might disagree. Dollars spent to assure continuation of subsistence opportunities would not be available for direct profit-making. On the other hand, as NANA's John Schaeffer points out, the corporation's future may be threatened by a loss of subsistence resources.

Similarly, directors would seek to strike a fair division of the benefits of corporate activity between the present generation of stockholders and future ones. Land or resources of the land sold to produce dividends for stockholders today will not be available for use or lease or sale in the future. But the benefits to most stockholders so far have been few. As one stockholder asked, in a letter critical of her corporation, "Shouldn't those living now have some real benefits from the settlement that helped achieve."

Wisdom and fairness in decision-making are not objectively measurable. The courts can't help stockholders obtain these qualities in their directors. Honest people might easily disagree on which actions were wise or unwise, fair or unfair: like other personal qualities of directors – integrity, imagination, directness, logical thinking, or a host of others – they can only be subject to the judgements of stockholders.

Individual Stockholders

While most of the responsibility for achievement of corporate goals rests with directors and staff of corporations, stockholders themselves have a share of it. While their role in corporate affairs is a limited one, they ought to bring to it the same attributes they look for in their directors.

As stockholders they choose directors and influence the course of the corporation's life. And as stockholders, they make their views known to the corporation about what it should be doing ow what it should not be doing, and thereby affect it. In these activities a responsible stockholder will try to act in good faith, to show reasonable care, to be wise and fair.

In part, success or failure of Native corporations will be affected by factors beyond their direct control, such as the condition of the nation's economy. In large part, however, the success of corporations will depend upon the quality of persons chosen by stockholders to be their leaders. And this choice depends, in some measure upon the quality of persons stockholders choose to be themselves.

Next Week: Conclusion of *Alaska Native Land Claims*